

REMARKS

Claim Status

Claims 23-31 are pending in the application.

With this Response, independent claim 23 has been amended. Support for this amendment is found throughout the application as filed. Reconsideration is respectfully requested.

It is believed these changes do not involve any introduction of new matter. Consequently, entry of these changes is believed to be in order and is respectfully requested.

Rejections Under 35 USC 103

Claims 23-31 were rejected under 35 USC 103(a) as being unpatentable over Kohl for reasons of record at pages 3-4 of the Office Action. Applicants respectfully traverse. However, without conceding to the basis of the rejections, Applicants have amended independent claim 23. Independent claim 23 now recites, inter alia, wherein the human ingests the beverage composition. Accordingly, the claims now specifically recite the physical step of the human ingesting the beverage compositions. Hence, it is now submitted that the method of independent claim 23 positively includes an actual physical step of ingesting the recited beverage.

Additionally, as described in the most recent Response, independent claim 23 recites, inter alia, “A method of treating dental erosion comprising orally administering to a human, in need thereof and who has been directed to ingest at least once daily, for the purpose of treating said dental erosion, an effective amount of a beverage composition...” The “at least once daily” was previously added as an element not found, disclosed, taught, or suggested in the prior art or the Board of Appeals’ decision. This type of temporal dosing requirement, such as “at least once daily”, is not disclosed, taught, or suggested in the prior art. Thus, since the references of record are silent regarding all of the elements in combination of independent claim 23, and thus dependent claims 24-31, reconsideration and withdrawal of the rejection are respectfully requested.

Additionally, to rebut the discussion on page 4 of the Office Action related to what is termed “non-functional” claim elements, Applicants submit that a functional relationship does in fact exist between “been directed” and the method of orally administering a beverage as recited in independent claim 23. On page 5, lines 9-19, of the application as filed, the specification states:

Wherein the mammal is directed to ingest one or more of the beverage compositions, such direction may be that which instructs and / or informs the user that use of the beverage composition may and / or will provide treatment against dental erosion. For example, such direction may be oral direction (*e.g.*, through oral instruction from, for example, a physician, dental professional, sales professional or organization, and / or radio or television media (*i.e.*, advertisement) or written direction (*e.g.*, through written direction from, for example, a physician or dental professional (*e.g.*, scripts), sales professional or organization (*e.g.*, through, for example, marketing brochures, pamphlets, or other instructive paraphernalia), written media (*e.g.*, internet, electronic mail, or other computer-related media), and / or packaging associated with the beverage composition (*e.g.*, a label present on a package containing the beverage composition).

Thus, as described in the specification, direction to ingest the beverage composition can include instruction and/or information to the user that use of the beverage composition may and/or will provide treatment against dental erosion. Such direction can be oral direction or written direction and/or packaging associated with the beverage composition. Accordingly, this direction is indeed functional as it includes information to the user that use of the beverage composition may and/or will provide treatment against dental erosion and is thus related to the method or orally administering the beverage composition as recited in independent claim 23. Moreover, this direction, inter alia, is yet another element that is not found in combination with the other elements of independent claim 23 and the dependent claims therefrom in the references of record. Therefore, for this additional reason, Applicants respectfully request reconsideration and withdrawal of the rejection under 35 USC 103(a) over Kohl.

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CONCLUSION

This Response represents an earnest effort to place the present application in proper form and to distinguish the inventions as claimed from the applied references. In view of the foregoing entry of the amendments presented herein, reconsideration of this application and allowance of the pending claims are respectfully requested.

Respectfully submitted,

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